UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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| In re: | Chapter 11 |
| LGA3 CORP., | Case No. 20-11456 (LSS) |
| Reorganized Debtor. | **Hearing Date: Jan. 19, 2022 at 10:00 am (ET)**<br>**Obj. Deadline: Dec. 17, 2021 at 4:00 pm (ET)** |

**NOTICE OF MOTION AND HEARING**

PLEASE TAKE NOTICE that on November 30, 2021, undersigned counsel for the United States of America, on behalf of the United States Environmental Protection Agency, filed via ECF the *United States' Motion for Approval of Environmental Settlement Agreement*, (the **Motion**) with the United States Bankruptcy Court for the District of Delaware (the **Court**). *See* ECF No. 169.[1]

PLEASE TAKE FURTHER NOTICE that, any responses or objections to the Motion must be in writing and filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **December 17, 2021 at 4:00 pm (prevailing Eastern Time).**

PLEASE TAKE FURTHER NOTICE that, if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before the Honorable Laurie Selber Silverstein, Chief United States Bankruptcy Judge for the District of Delaware, at the

[1] In conformance with Local Rule 9013-1(f), the United States consents to the entry of final orders or judgments by the Court regarding the Motion if it is determined that the Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the Constitution.

Court, 824 North Market Street, 6th Floor, Courtroom 2, Wilmington, Delaware 19801 on **January 22, 2022 at 10:00 am (prevailing Eastern Time).**

**PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: December 3, 2021

/s Natalie G. Harrison
NATALIE G. HARRISON
Environmental Enforcement Section
Environment and Natural Resources Division
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Of Counsel:
MARGO B. LUDMER
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U.S. Environmental Protection Agency, Region II
Office of Regional Counsel
290 Broadway
New York, NY 10007

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 30, 2021, I electronically filed the Motion with the Clerk of the Court by using the CM/ECF system, which sent a notice of electronic filing to all CM/ECF participants. *See* ECF No. 169. Additionally, a copy of this Notice and Motion was distributed via email to the Core/2002 List as maintained by Prime Clerk, the Claims Agent in this matter on December 3, 2021.

Further, on December 3, 2021, I provided a copy of this Notice and Motion via email to counsel the parties identified below. These parties are not listed on the Core/2002 List, but have been notified by EPA that they may be potentially responsible parties for the Operable Units subject to the Settlement Agreement before the Court in the Motion; have historically corresponded with EPA regarding one or more of the Operable Units; and thus may have an interest in or rights affected by the Settlement Agreement. Finally, on December 3, 2021, I electronically filed this Notice of the Motion with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

Non-Parties Noticed by Email to Counsel:

1. Carrier Corporation
2. City of Syracuse
3. Cooper Crouse-Hinds, LLC
4. Niagara Mohawk Power Corporation d/b/a National Grid
5. Onondaga County
6. Revitalizing Auto Communities Environmental Response (RACER) Trust
7. Town of Salina

/s Natalie G. Harrison
NATALIE G. HARRISON
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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| In re: | Chapter 11 |
| LGA3 CORP., | Case No. 20-11456 (LSS) |
| Reorganized Debtor. | |

**UNITED STATES' MOTION FOR APPROVAL OF ENVIRONMENTAL SETTLEMENT AGREEMENT**

The United States of America, on behalf of the United States Environmental Protection Agency, files this motion for approval and entry of the proposed Settlement Agreement between the United States and Syracuse China LLC, which the United States lodged with the Court on October 12, 2021. [Case No. 20-11439, Docket No. 722].[1] In support of its Motion, the United States asserts as follows:

## INTRODUCTION

### Procedural and Factual History

1. The Settlement Agreement resolves a dispute regarding the United States' Proof of Claim filed against Syracuse China Company.[2] [Claim No. 733].

2. In its Proof of Claim, the United States alleged that Syracuse China Company was liable under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the United States' past and future costs incurred responding to the release or

[1] The Proposed Settlement Agreement was inadvertently lodged with the Court under the closed Chapter 11 Case Number 20-11439.
[2] Following the Effective Date of the First Amended Joint Plan of Reorganization for Libbey Glass Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code, Syracuse China Company was dissolved and Syracuse China LLC was formed as its successor.

threatened release of hazardous substances at two operable units (OUs) of the Onondaga Lake Superfund Site in Syracuse, New York. One OU is the Ley Creek Deferred Media OU, which includes an upstream section of Ley Creek (a tributary of Onondaga Lake) and adjacent floodplains extending from Townline Road to the Route 11 Bridge. The other OU is the Lower Ley Creek OU, which encompasses a downstream section of Ley Creek and adjacent floodplains, extending from the Route 11 Bridge to Onondaga Lake. Collectively, the United States refers to the Ley Creek Deferred Media OU and the Lower Ley Creek OU as the Ley Creek OUs.

3. Syracuse China Company and/or its corporate predecessors owned and operated an industrial facility (Facility) at 2801 Court Street, which was adjacent to a portion of Ley Creek comprising the Ley Creek Deferred Media OU. The Facility was in close proximity to the upstream boundary of the Lower Ley Creek OU at the Route 11 Bridge. Operations at the Facility included the production of vitreous ceramic hotel china and china dinnerware. The Facility also included a thirteen-acre industrial landfill that received waste from Facility manufacturing, as well as from local municipalities and the public.

4. Several contaminants of concern for the Ley Creek OUs, including polychlorinated biphenyls (PCBs), chromium, copper, lead, and zinc, were used, generated, and/or landfilled at the Facility during historic operations. The United States alleged that Syracuse China discharged these hazardous substances to the Ley Creek OUs via direct discharge of Facility wastewater and landfill leachate through an outfall to Ley Creek.

5. After selecting remedies for the Ley Creek OUs, EPA anticipates that the Ley Creek Deferred Media OU remedy will cost approximately $93,500,000, and the Lower Ley Creek OU remedy will cost approximately $25,271,000. EPA previously had received

approximately $21,883,013.31 from a separate bankruptcy agreement with General Motors, another potentially responsible party (PRP) at the Ley Creek OUs, in satisfaction of EPA's allowed claim for response costs at the Lower Ley Creek OU. After reimbursement of past costs related to the Lower Ley Creek OU, EPA currently estimates that there will be a potential funding shortfall for the Lower Ley Creek remedial action of $5,754,656.24.[3]

6. Under CERCLA, liability is joint and several. *E.g.*, *New Castle Cty. v. Halliburton NUS Corp.*, 111 F.3d 1116, 1121 (3d Cir. 1997).

7. Based on the estimated cost of the Ley Creek Deferred Media OU remedial action and the potential funding shortfall for the Lower Ley Creek remedial action, the United States asserted a claim against Syracuse China for response costs totaling approximately $101 million.[4] United States' Proof of Claim, ¶ 18.

The Settlement Agreement

8. The Proposed Settlement Agreement establishes an Allowed General Unsecured Claim for the United States in the amount of $6,616,976 (the EPA Allowed Claim), to be allocated between the Ley Creek OUs in proportion to the anticipated remedial action costs as alleged in Paragraphs 11 and 12 of the EPA Proof of Claim. Settlement Agreement at ¶ 2. In return, EPA covenants not to file a civil action or take administrative action against Syracuse China LLC under Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, in connection

[3] The United States' Proof of Claim initially asserted that the Lower Ley Creek OU remedial shortfall would be approximately $7.4 million, based on a more detailed accounting performed after filing the Proof of Claim.

[4] The United States' Proof of Claim also asserted that Syracuse China Company was liable for EPA's oversight costs for the Lower Ley Creek OU Remedial Design, initially estimated to be $136,910.52. However, EPA has since received reimbursement of its oversight costs for the Lower Ley Creek OU Remedial Design from other PRPs, and no longer asserts these costs against Syracuse China or its successor, the Reorganized Debtor.

with the Ley Creek OUs.

9. On October 18, 2021, the United States published notice of the proposed Settlement Agreement in the Federal Register, soliciting public comments on the Settlement Agreement. The United States received no comments during the 30-day comment period, including from other PRPs for the Ley Creek OUs. For the reasons explained below, the Settlement Agreement is a fair and reasonable compromise of the disputed contentions of the parties under environmental law based on the facts and circumstances of this matter.

## ARGUMENT

### Standard of Review

10. A court should enter an environmental settlement that is fair, reasonable, and consistent with the principles of CERCLA. *United States v. Se. Pa. Transp. Auth. (SEPTA)*, 235 F.3d 817, 823 (3d Cir. 2000) (citing *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 85 (1st Cir. 1990)). The presumption in favor of settlement "is particularly strong where a [settlement] has been negotiated by the Department of Justice on behalf of a federal administrative agency like EPA which enjoys substantial expertise in the environmental field." *United States v. Akzo Coatings of America, Inc.*, 949 F.2d 1409, 1436 (6th Cir. 1991).[5] The standard for the court's review "is not whether the settlement is one which the court itself might have fashioned, or

[5] The United States enters into the Settlement Agreement here under the Attorney General's inherent authority to compromise cases involving the United States or its agencies. *See Swift & Co. v. United States*, 276 U.S. 311, 331-32 (1928); *see, e.g., United States v. Hercules, Inc.*, 961 F.2d 796, 798 (8th Cir. 1992); *Tosco Corp. v. Hodel*, 804 F.2d 590, 591 (10th Cir. 1986); *Applegate v. United States*, 52 Fed. Cl. 751, 757-58 (Fed. Cl. 2002); *United States v. Asarco, Inc.*, 814 F. Supp. 951, 957 (D. Colo. 1993); *Halbach v. Markham*, 106 F. Supp. 475, 479-80 (D.N.J. 1952), *aff'd*, 207 F.2d 503 (3d Cir. 1953). "Courts have upheld the United States entry into numerous environmental bankruptcy settlements under the Attorney General's inherent authority that have obtained important benefits for the public. . . ." *In re ASARCO LLC*, 2009 WL 8176641 (Bankr. S.D. Tex. June 5, 2009) (citations omitted).

considers as ideal, but whether the proposed Settlement Agreement is fair, reasonable, and faithful to the objective of" CERCLA. *United States v. Kramer*, 19 F. Supp. 2d 273, 280 (D.N.J. 1998) (quoting *Cannons Eng'g Corp.*, 899 F.2d at 84) (remaining citations omitted).

11. Approval of a settlement agreement is committed to the trial court's sound discretion, which should be exercised in light of the strong policy favoring voluntary settlements of litigation. *See United States v. Hooker Chem. & Plastics Corp.*, 776 F.2d 410, 411 (2d Cir. 1985). Ultimately, a court reviewing a proposed settlement must either accept or reject its terms, rather than tinker with them. *United States v. City of Fort Lauderdale*, 81 F. Supp. 2d 1348, 1350 (S.D. Fla. 1999) (citing *United States v. BASF-INMONT Corp.*, 819 F. Supp. 601, 608 (E.D. Mich. 1993)).

The Settlement Is Fair.

12. A settlement must be both procedurally and substantively fair. *E.g., Kramer*, 19 F. Supp. 2d at 283–84. "Procedural fairness considers the openness, candor, and bargaining balance of the settlement process," with a particular eye to whether the settlement involved "informed, arm's-length bargaining." *Id.* at 284 (citations omitted). A settlement is presumed valid if it results from "informed, arms-length bargaining by the EPA, an agency with the technical expertise and the statutory mandate to enforce the nation's environmental protection laws, in conjunction with the Department of Justice . . . ." *United States v. Rohm & Haas Co.*, 721 F. Supp. 666, 681 (D.N.J. 1989) (citations omitted).

13. A proposed settlement is substantively fair if the government offers a "'plausible explanation' for 'measuring comparative fault and allocating liability'" of the settling PRP. *Kramer*, 19 F. Supp. 2d at 285 (citing *Cannons Eng'g Corp.*, 899 F.2d at 87). EPA enjoys certain flexibility in determining a PRP's comparative fault because, among other reasons, EPA is

simultaneously tasked with evaluating complex and occasionally unpredictable information, as well as seeking swift settlements to support remediation. *Cannons Eng'g Corp.*, 899 F.2d at 88. Thus, a court should support such a settlement unless the proffered measure of comparative fault is arbitrary, capricious, and devoid of a rational basis. *E.g.*, *In re Tutu Water Wells*, 326 F.3d at 207.

14. The Settlement Agreement is the result of good-faith, arm's-length bargaining between the United States and the Reorganized Debtor. Experienced counsel represented the parties during negotiations that required good-faith evaluations of the merits of various legal arguments, and the proposed Settlement Agreement reflects the parties' mutually acceptable compromise. It is therefore procedurally fair.

15. It is also substantively fair. Although CERCLA liability is joint and several, settlements under CERCLA should roughly correlate with "some acceptable measure of comparative fault." *Cannons Eng'g Corp.*, 899 F.2d at 87. The proposed Settlement Agreement reflects at least EPA's estimate of the fair share of remedial costs attributable to Syracuse China for the Ley Creek OUs, based on information currently available to EPA, including information made available during and following the General Motors bankruptcy. In this instance, EPA has notified seven viable PRPs of their potential liability at the Lower Ley Creek OU, and it intends to notify multiple, additional PRPs of their potential liability in connection with the Ley Creek Deferred Media OU. Ideally, EPA would be able to fully assess the scope of each PRP's liability prior to seeking reimbursement of its response costs. However, the timing of this bankruptcy did not permit this, and neither CERCLA nor the Bankruptcy Code require EPA to act with perfect knowledge. *See, e.g.*, *In re Petters Co., Inc.*, 455 B.R. 166, 175 (8th Cir. 2011); *United States v. Montrose Chem. Corp.*, 793 F. Supp. 237, 240 (C.D. Cal. 1992). Further, no party, including

other PRPs at the Ley Creek OUs, has suggested to date that the Settlement Agreement is unfair or otherwise unacceptable. The United States has reasonably exercised its discretion in evaluating Syracuse China's fair share, after consideration of the available facts and assessment of litigation risk. *See also Cannons Eng'g Corp.*, ("[W]hat constitutes the best measure of comparative fault at a particular Superfund site under particular factual circumstances should be left largely to the EPA's expertise.").

16. The United States meanwhile retains its opportunity to seek the remaining costs from other PRPs responsible for contamination. See Settlement Agreement at ¶ 9 ("[N]othing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)–(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Settlement Agreement. . . ."). The proposed Settlement Agreement is therefore fair.

The Settlement Is Reasonable.

17. The reasonableness inquiry is pragmatic and does not require precise calculations. *Kramer*, 19 F. Supp. 2d at 286–87 (quoting *United States v. Charter Int'l Oil Co.*, 83 F.3d 510, 521 (1st Cir. 1996)). Instead, the court examines several factors when reviewing a proposed settlement for reasonableness, the most important of which is the settlement's likely effectiveness as a vehicle for achieving the cleanup. *United States v. Cornell-Dubilier Elecs., Inc.*, Civ. Act. No. 12-5407 (JLL), 2014 WL 4978635, at *9 (D.N.J. Oct. 3, 2014) (quoting *Cannons Eng'g Corp.*, 899 F.2d at 89–90). The court must also consider whether the public is satisfactorily compensated for response costs. *Cannons Eng'g Corp.*, 899 F.2d at 90. Finally, the court reviews the relative strength of the parties' litigating positions against the risks and delays that would result from further litigation. *E.g.*, *Cornell-Dubilier Elecs.*, 2014 WL 4978635, at *11

(citing *Cannons Eng'g Corp.*, 899 F.2d at 90; *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Rohm & Haas Co.*, 721 F. Supp. at 680)).

18. The proposed Settlement Agreement meets these standards. Upon approval of the Settlement Agreement by this Court and distribution from the General Unsecured Recovery Cash Pool established by the First Amended Joint Plan of Reorganization as confirmed by the Court in this matter, [Docket No. 598], EPA intends to use the proceeds from this settlement to continue funding remedial work at the Ley Creek OUs, to protect human health and the environment. The settlement also allows the parties to avoid the expense, delay, and uncertainty inherent to litigation. The Settlement Agreement is reasonable.

The Settlement Agreement Advances the Objectives of CERCLA and Bankruptcy Law.

19. CERCLA's primary objective is to ensure the "prompt and effective cleanup by responsible parties, while preserving both public finances and public health" by imposing the costs on those responsible parties. *Kramer*, 19 F. Supp. 2d at 289; *see also, e.g.*, *Cannons Eng'g Corp.*, 899 F.2d at 90–91. CERCLA expressly anticipates that the United States will use settlements "to expedite effective remedial actions and minimize litigation." 42 U.S.C. § 9622(a), (d).

20. The Bankruptcy Code is undergirded by a "fresh start" policy by allowing insolvent debtors to reorganize, resolve creditors' claims, and "enjoy a new opportunity in life with a clear field for future effort." *Grogan v. Garner*, 498 U.S. 279, 283–86 (1991) (quotations omitted).

21. The proposed Settlement Agreement is consistent with those goals because it allows the United States to resolve its claims against Syracuse China, one of several PRPs at the Ley Creek OUs, avoid litigation, and continue its assessment as to the liability and costs to be

recovered from the remaining PRPs. *See Kramer*, 19 F. Supp. 2d at 289 (noting a settlement's value in protecting the public fisc and conserving the government's litigation resources). It also allows the Reorganized Debtor to move forward having resolved Syracuse China's environmental liability to the United States for the Ley Creek OUs. The Settlement Agreement is therefore consistent with the principles of CERCLA and bankruptcy law.

## CONCLUSION

The proposed Settlement Agreement resolves the United States' claims against Syracuse China in a manner that is fair, reasonable, and consistent with CERCLA and environmental law. After publishing the settlement for public comment, the United States received no comments on it. Therefore, the United States respectfully requests that the Court approve the Settlement Agreement.

Respectfully submitted,

NATHANIEL DOUGLAS
Deputy Chief
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice

/s Natalie G. Harrison
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U.S. Environmental Protection Agency, Region II
Office of Regional Counsel

290 Broadway
New York, NY 10007

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 30, 2021 I electronically filed the foregoing Motion with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s Natalie G. Harrison
NATALIE G. HARRISON
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

**EXHIBIT A**

**PROPOSED ORDER APPROVING SETTLEMENT AGREEMENT**

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

| | | |
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| In re: | ) | Chapter 11 |
| | ) | |
| LGA3 CORP., | ) | Case No. 20-11456 (LSS) |
| | ) | |
| Reorganized Debtor. | ) | |

**ORDER APPROVING ENVIRONMENTAL SETTLEMENT AGREEMENT**

Upon the motion (Motion) of the United States of America, on behalf of the United States Environmental Protection Agency, for entry of this Order Approving the Environmental Settlement Agreement, a copy of which is attached hereto as Exhibit 1; and this Court having jurisdiction over this matter under 28 U.S.C. §§ 157, 1331, 1334, and 42 U.S.C. §§ 9607 and 9613(b), and the confirmed First Amended Joint Plan of Reorganization; and this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409; and this Court having found that the notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the Hearing); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just case for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Notice of Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.
3. The Settlement is hereby authorized, and the Settlement Agreement is hereby APPROVED and entered as a final judgment.
4. The Parties are hereby authorized to take any and all actions reasonably necessary to effectuate the terms of the Settlement.
5. The Court retains jurisdiction over any and all matters arising from or related to the implementation or interpretation of the Settlement Agreement or this Order.
6. The Settlement Agreement shall be implemented in accordance with its terms.

Dated: _____
Wilmington, Delaware

_____
THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT 1

## Settlement Agreement

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | |
|---|---|
| In re: | Chapter 11 |
| LGA3 CORP.,[1] | Case No. 20-11456 (LSS) |
| Reorganized Debtor. | |

SETTLEMENT AGREEMENT

WHEREAS, on June 1, 2020, Syracuse China Company[2] and certain of its affiliates (the "Affiliated Debtors" and together with Syracuse China, the "Debtors") each filed with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), thereby commencing chapter 11 cases which were jointly administered as *In re: Libbey Glass Inc. et al.*, Case No. 20-11439 (LSS) (collectively, the "Chapter 11 Cases");

WHEREAS, on December 29, 2020, the Bankruptcy Court entered the *Final Decree (I) Closing the Closing Cases and (II) Granting Related Relief* (Docket No. 715)

[1] The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor's federal tax identification number, is LGA3 Corp. (1505). The Reorganized Debtor's mailing address is P.O. Box 10060, Toledo, Ohio 43699-0060. References to docket numbers contained herein are references to the chapter 11 docket in Libbey Glass Inc.'s chapter 11 case, Case No. 20-11439 (LSS).

[2] Following the effective date of the Plan (as defined herein), Syracuse China Company was dissolved and Syracuse China LLC ("Syracuse China") was formed as the successor of Syracuse China Company. As such, this Settlement Agreement shall apply to Syracuse China LLC and its successors and assigns.

(the "Case Closing Order"), closing each of the Chapter 11 Cases other than the Chapter 11 Case of LGA3 Corp.;[3]

WHEREAS, the United States, on behalf of the United States Environmental Protection Agency ("EPA"), filed a proof of claim (Claim No. 733) (the "EPA Proof of Claim"), contending that Syracuse China is liable under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601–9675, for costs incurred and to be incurred by the United States in response to releases and threats of releases of hazardous substances at or in connection with two "operable units" ("OUs"), of the Onondaga Lake Superfund Site, located in Syracuse, Onondaga County, New York, which are referred to as the Lower Ley Creek OU and the Ley Creek Deferred Media OU (collectively, the "Ley Creek OUs");

WHEREAS, EPA is unaware, as of the date of execution of this Settlement Agreement, of any information that any affiliated debtor owned or operated or controlled Syracuse China;

WHEREAS, the EPA Proof of Claim does not assert claims or liabilities against any of the Affiliated Debtors;

WHEREAS, EPA is not aware, as of the date of execution of this Settlement Agreement, of any claims or causes of action against the Affiliated Debtors for the Ley Creek OUs or the Onondaga Lake Superfund Site;

[3] Entry of the Case Closing Order was without prejudice to, among other things, the Debtors' rights to object to claims filed against any Debtor. *See* Case Closing Order ¶ 6.

WHEREAS, the EPA Proof of Claim asserts the aforementioned response cost liability as a general unsecured claim;

WHEREAS, the EPA Proof of Claim sets forth the United States' position that Syracuse China's obligation to comply with work obligations, including but not limited to the Lower Ley Creek OU Remedial Design Order and other cleanup obligations, under court orders, administrative orders, environmental statutes, regulations, licenses, and permits is not dischargeable pursuant to Section 1141 of the Bankruptcy Code;

WHEREAS, Syracuse China disagrees with the United States' contentions and, but for this agreement (the "Settlement Agreement"), would dispute, in whole or in part, the EPA Proof of Claim;

WHEREAS, Syracuse China and EPA wish to resolve their differences with respect to the EPA Proof of Claim as provided herein;

WHEREAS, on October 20, 2020, the Bankruptcy Court entered an order (Docket No. 598) (the "Confirmation Order") confirming the *First Amended Joint Plan of Reorganization for Libbey Glass Inc. and its Affiliate Debtors under Chapter 11 of the Bankruptcy Code* (the "Plan") attached to the Confirmation Order as Exhibit A thereto;

WHEREAS, on November 13, 2020, the Plan was substantially consummated and the effective date of the Plan occurred;

WHEREAS, pursuant to the Plan, the Debtors have reserved $900,000 as a General Unsecured Recovery Cash Pool to be distributed on a pro rata basis to holders of Allowed General Unsecured Claims (each as defined in the Plan) in accordance with the Plan, and it is not anticipated that this cash will be converted to any other type of asset;

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

2. With respect to the Ley Creek OUs, the United States on behalf of EPA shall have an Allowed General Unsecured Claim in the amount of $6,616,976 (the "EPA Allowed Claim"), to be allocated between the Ley Creek OUs in proportion to the anticipated remedial action costs as alleged in Paragraphs 11 and 12 of the EPA Proof of Claim.

3. The EPA Allowed Claim shall receive the same treatment under the Plan, without discrimination, as all other Allowed General Unsecured Claims, with all attendant rights provided by the Plan, and shall not be entitled to any priority in distribution over other Allowed General Unsecured Claims. In no event shall the EPA Allowed Claim be subordinated to any other Allowed General Unsecured Claim pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, or 726(a)(4) of the Bankruptcy Code.

4. EPA may, in its sole discretion, deposit any portion of any cash distributions it receives pursuant to this Settlement Agreement, and any portion of the proceeds of any

non-cash distributions it receives pursuant to this Settlement Agreement, into the Lower Ley Creek Special Account (024Q25) and Ley Creek Deferred Media Special Account (024Q09) established by EPA for the Ley Creek OUs within the Hazardous Substance Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the Ley Creek OUs or to be transferred to the Hazardous Substance Superfund.

5. Only the amount of cash received by EPA (and net cash received upon sale of any non-cash distributions) pursuant to this Settlement Agreement for the EPA Allowed Claim, and not the total amount of the EPA Allowed Claim, shall be credited as a recovery by EPA for the Ley Creek OUs, which credit shall reduce the liability of non-settling potentially responsible parties for the Ley Creek OUs by the amount of the credit.

6. Cash distributions to the United States pursuant to this Settlement Agreement shall be made at https://www.pay.gov or by FedWire Electronic Funds Transfer in accordance with instructions, including a Consolidated Debt Collection System ("CDCS") number, to be provided to the Debtors by the Financial Litigation Unit of the United States Attorney's Office for the District of Delaware.

Non-cash distributions to the United States shall be made to:

U.S. EPA
Cincinnati Finance Center
26 W. Martin Luther King Drive
MS: Norwood
Cincinnati, Ohio 45268

At the time of any cash or non-cash distribution pursuant to this Settlement Agreement, the Debtors shall transmit written confirmation of such distribution to the

United States at the addresses specified below and email confirmation of such distribution to the EPA Cincinnati Finance Office at cinwd_acctsreceivable@epa.gov, with a reference to Bankruptcy Case Number 20-11456, the CDCS number, and Site/Spill ID Number 024Q:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
Ref. DOJ File No. 90-11-3-08348/6

Margo B. Ludmer
Assistant Regional Counsel
New York / Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 2
New York, NY 10007

7. Notwithstanding any other provision of this Settlement Agreement, and except as provided under applicable non-bankruptcy law, there shall be no restrictions on the ability and right of EPA to sell its right to all or a portion of any distributions under the Plan to one or more third parties, or to transfer or sell to one or more third parties all or a portion of the EPA Allowed Claim.

8. In consideration of the distributions that will be made under the terms of this Settlement Agreement, and except as specifically provided in Paragraphs 9–11, EPA covenants not to file a civil action or take administrative action against Syracuse China pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Ley Creek OUs.

9. The covenant set forth in Paragraph 8 extends only to Syracuse China and does not extend to any other person. Nothing in this Settlement Agreement is intended as a covenant for any person or entity other than Syracuse China and the United States. EPA and Syracuse China expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, that they may have against any predecessors of Syracuse China or any other persons, firms, corporations, or entities for any matter arising at or relating in any manner to the Ley Creek OUs. Further, nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)–(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Settlement Agreement.

10. The covenant set forth in Paragraph 8 does not pertain to any matters other than those expressly specified therein. The United States expressly reserves, and this Settlement Agreement is without prejudice to, all rights against Syracuse China with respect to all matters other than those set forth in Paragraph 8, provided however, nothing in this Settlement Agreement modifies any term or provision of the Plan or Confirmation Order. The United States also specifically reserves, and this Settlement Agreement is without prejudice to, any action based on a failure to meet a requirement of this Settlement Agreement. In addition, the United States reserves, and this Settlement Agreement is without prejudice to, all rights against Syracuse China with respect to the Ley Creek OUs for liability under federal or state law for acts by Syracuse China or its successors or assigns that occur after the date of filing of this Settlement Agreement.

11. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take any response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable statute or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority, provided, however, that nothing in this sentence affects the covenant set forth in Paragraph 8. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable statute or regulation or to excuse Syracuse China or its successors or assigns (if any) from any disclosure or notification requirements imposed by CERCLA or any other applicable statute or regulation.

12. Syracuse China covenants not to sue and agrees not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Ley Creek OUs, including, but not limited to the following: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613; or (iii) any claims arising out of response activities at the Ley Creek OUs. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

13. Notwithstanding any other provision of this Settlement Agreement, Syracuse China reserves, and this Settlement Agreement is without prejudice to, claims against the

United States in the event any claim is asserted by the United States against Syracuse China pursuant to any of the reservations set forth in Paragraph 10, other than for failure to meet a requirement of this Settlement Agreement, but only to the extent that Syracuse China's claims arises from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

14. The parties hereto agree, and by entering this Settlement Agreement the Bankruptcy Court finds, that this Settlement Agreement constitutes a judicially-approved settlement pursuant to which Syracuse China has, as of the Effective Date, resolved its liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken, and all response costs incurred or to be incurred, at or in connection with the Ley Creek OUs by the United States or any potentially responsible parties, provided, however, that, if EPA exercises rights under the reservations in Paragraph 10, other than for failure to meet a requirement of this Settlement Agreement, the "matters addressed" in this Settlement Agreement shall no longer include those response costs or response actions that are within the scope of the exercised reservation. "Effective Date" means the date on which this Settlement Agreement is approved by the Bankruptcy Court.

15. This Settlement Agreement constitutes a judicially-approved settlement pursuant to which Syracuse China has, as of the Effective Date, resolved its liability to the

United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

16. This Settlement Agreement shall be subject to approval of the Bankruptcy Court. Syracuse China and the United States shall promptly seek approval of this Settlement Agreement under the applicable provisions of the Bankruptcy Rules and the Bankruptcy Code, subject to Paragraphs 17 and 18 of this Settlement Agreement.

17. This Settlement Agreement shall be filed with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations that indicate the Settlement Agreement is not in the public interest.

18. If for any reason (a) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 17, or (b) the Settlement Agreement is not approved by the Bankruptcy Court, the following shall apply: (i) this Settlement Agreement shall be null and void, and the parties hereto shall not be bound under the Settlement Agreement or under any documents executed in connection herewith; (ii) the parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (iii) this Settlement Agreement and any

documents prepared in connection herewith shall have no residual or probative effect or value.

19. Prime Clerk LLC, the Debtors' claims and noticing agent, shall be authorized to update the official claims register maintained for the Debtors consistent with the terms of this Settlement Agreement.

20. This Settlement Agreement constitutes the sole and complete agreement of the parties hereto with respect to the matters addressed herein.

21. This Settlement Agreement may not be amended except by a writing signed by all the parties and approved by the Bankruptcy Court.

22. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

23. The Bankruptcy Court (or, upon withdrawal of the Bankruptcy Court's reference, the United States District Court for the District of Delaware) shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply at any time for such further order, direction, or relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

The undersigned party hereby enters into this Settlement Agreement in *In re LGA3 Corp.* Case No. 20-11456 (Bankr. D. Del).

FOR THE UNITED STATES OF AMERICA:

Date: 9/28/2021 By: Nathaniel Douglas

NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 9/28/2021 By: Natalie Harrison

NATALIE G. HARRISON
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

The undersigned party hereby enters into this Settlement Agreement in *In re LGA3 Corp.* Case No. 20-11456 (Bankr. D. Del).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 10/7/2021

By: Evangelista, Pat Digitally signed by Evangelista, Pat Date: 2021.10.07 16:47:28 -04'00'

PAT EVANGELISTA
Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

Date: 09/30/2021

By: Margo Ludmer

MARGO B. LUDMER
Assistant Regional Counsel
New York / Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007

The undersigned party hereby enters into this Settlement Agreement in *In re LGA3 Corp.* Case No. 20-11456 (Bankr. D. Del.)

FOR THE DEBTORS, AND ON BEHALF OF SYRACUSE CHINA LLC:

Date: 09-13-2021 By: Jonnie Hodges

JONNIE HODGES
Senior Counsel and Secretary
Libbey Glass LLC